IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ROY M. TERRY, JR., and DURRETTEBRADSHAW, PLC, RECEIVER FOR: TERRY L. DOWDELL, DOWDELL, DUTCHER & ASSOCIATES, INC., EMERGED MARKET SECURITIES, DE-LLC, AUTHORIZED AUTO SERVICES, INC. and VAVASSEUR CORPORATION,	)	CIVIL ACTION NO. 3:03CV00052
Plaintiffs,	)	
v.	)	MEMORANDUM OPINION
ROBERT F. JUNE, SR.,	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

This matter comes before the court on the defendant's Combined Motion to Dismiss and Motion to Quash Service of Process filed August 13, 2003. The court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and argument would not aid in the decisional process. Having thoroughly considered the parties' memoranda and all relevant law, and for the reasons stated herein, the court shall deny the defendant's motion.

I.

Beginning in April 1998 and continuing through 2001, Terry L. Dowdell orchestrated and operated a classic Ponzi scheme. Terry Dowdell solicited contributors for an investment and trading program marketed by Vavasseur Corporation ("Vavasseur"), a

Bahamian corporation owned and operated by Mr. Dowdell. The Vavasseur program entailed trading of medium-term debentures and other private bank debt. Clients were promised returns on their investments of at least four percent per week for a minimum of forty weeks of trading activity for an expected annual return of 160 percent. To perpetuate his scheme, Mr. Dowdell would simply use the money contributed by the newest investors to pay earlier investors their promised "profits." He would then misappropriate the remaining funds, transferring at least $29 million to business associates, family, and friends. In January 2001, the Securities and Exchange Commission ("SEC"), later joined by the Federal Bureau of Investigation ("FBI"), initiated an investigation into the Vavasseur program. The investigation to date has identified at least seventy-six direct investors, with an undetermined number of subinvestors, who contributed to the fraudulent investment program. While the exact amount of investors' loss is as yet unknown, it is estimated to exceed of $121 million.

To facilitate recovery of these losses, this Court appointed Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC as Receiver for Terry L. Dowdell and his various business entities by Orders entered July 12, 2002 (Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc. and Emerged Market Securities, DE-LLC), September 17, 2002 (Authorized Auto Services, Inc.), and February 18, 2003 (Vavasseur Corporation). On May 14, 2003, this Court entered an Order reappointing Roy M. Terry, Jr. and DuretteBradshaw PLC as Receiver as to Terry L. Dowdell and all of the aforenamed business entities.

The plaintiff, acting in its capacity as Receiver, filed this action against Robert F. June, Sr. on June 10, 2003, asserting claims of unjust enrichment and fraudulent conveyance. Robert F. June, Sr. is a relative of Robert June, Jr. who is alleged to have been a business associate of Terry Dowdell. The plaintiff claims that Robert F. June, Sr. was a Vavasseur investor, but that unlike many such investors, the amount of his investment was repaid in full by Terry Dowdell. In addition, the Receiver contends that the defendant received substantial "earnings" on his investment with Vavasseur. These earnings were not actually investment profit, but rather were simply the investment funds of later investors in the Ponzi scheme. The plaintiff asserts that Mr. June knew, or should have known, that the benefits he derived from his investment in the Vavasseur Program were the proceeds of a fraudulent scheme. The defendant now moves this Court to quash service of process and dismiss the complaint for lack of personal jurisdiction.

II.

Because the defendant's motion to dismiss relies on pleadings, affidavits and supporting documents, the plaintiff need only make a prima facie showing of jurisdiction. *See Mylan*, 2 F.3d at 60; *Frontline Test Equip., Inc. v. Greenleaf Software, Inc.*, 10 F. Supp. 2d 583, 588 n.6 (W.D. Va. 1998). The plaintiff alleges that this court holds personal jurisdiction over the defendant pursuant to specific statutory authorization applicable to federal court-appointed receiverships. Alternatively, the plaintiff alleges that the Virginia long arm statute provide independent grounds whereby this court may exercise personal jurisdiction over the defendant.

In support of his motion to dismiss, the defendant contests each of the plaintiff's asserted bases for personal jurisdiction. Specifically, he contends that this Court lacks personal jurisdiction as provided by the Virginia long arm statute because his role in the investment scheme is insufficient to support a finding of minimum contacts with the forum state. The defendant further argues that this Court may not assert personal jurisdiction over him, nor may it effectuate service of process, because the Receiver has not complied with the process for obtaining jurisdiction pursuant to the terms of 28 U.S.C. § 754. It is this latter objection to the exercise of jurisdiction to which this court now turns.

A.

A court-appointed receiver may obtain in rem jurisdiction over any and all receivership property by complying with the procedural requirements of 28 U.S.C. § 754. Section 754 provides:

> A receiver appointed in any civil action or proceeding involving property, real, personal, or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.
>
> He shall have the capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.
>
> Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the

> district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

If the receiver does not comply with the procedure for obtaining in rem jurisdiction pursuant to section 754, either by failing to file all of the required documents or by failing to do so within the required ten-day period, the general rule is that the receiver is divested of jurisdiction. In rare cases, some courts have nonetheless excused strict compliance with the procedural requirements of section 754. *SEC v. Equity Servs. Corp.*, 632 F.2d 1092 (3rd Cir. 1980); *Kilsheimer v. Rose & Moskowitz*, 257 F.2d 242 (2d Cir. 1958). Such exception has been permitted where extraordinary circumstances are present and as long as the rights of others have not been prejudiced during the intervening period. *Equity Servs. Corp.*, 632 F.2d at 1095; *Kilsheimer*, 257 F.2d at 244.

Whether exceptional circumstances exist to justify a deviation from the procedural requirements of section 754 is only pertinent where the receiver has failed to meet the statutorily mandated deadline. According to the defendant, the plaintiff's failure to file copies of the complaint and appointment in the U.S. District Court for the District of Michigan within ten days of the initial appointment divests the Receiver of jurisdiction that could otherwise be obtained under section 754.

The critical issue to be resolved is the legal effect, if any, of this court's order reappointing the Receiver. Section 754 does not, by its terms, distinguish between initial orders of appointment and later reappointment of the receiver. Courts having addressed

this issue unanimously suggest that an order of reappointment will renew the ten-day filing deadline mandated by section 754. *Equity Servs. Corp.*, 632 F.2d at 1095 ("[S]ection [754] does not address whether a late filing permits a receiver to reassume jurisdiction and control or whether once the ten-day period has expired a new order of appointment must be entered before a receiver assumes jurisdiction and control."); *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 388 (D.C. Cir. 1996) ("On remand, the court may reappoint the receiver and start the ten-day clock ticking once again."); *SEC v. Heartland Group, Inc.*, No. 01-C-1984, 2003 WL 21000363 (N.D. Ill. 2003) ("[T]he court can easily correct [the Receiver's] failure to file such a claim by merely reappointing the Receiver and thereby starting the 10-day time period under § 754 ticking once more."); *see also SEC v. Am. Capital Investments, Inc.*, 98 F.3d 1133, 1143 (9th Cir. 1996) (holding that the district court's entry of a permanent appointment order following a temporary appointment order set a new ten-day period running for purposes of section 754). Permitting a receiver to reassume jurisdiction in this manner is consistent with the role and purpose of a federal receivership. Were this not the rule, a receiver would be forced to file the required documentation in all ninety-four federal districts to protect jurisdiction over any potential, but presently unknown, receivership assets—a result that would produce a needless waste of time and lead to dissipation of assets otherwise returnable to defrauded investors. *Heartland Group*, 2003 WL 21000363, at *5; *SEC v. Infinity Group Corp.*, 27 F. Supp. 2d 559, 563 (E.D. Pa. 1998).

This court reappointed the Receiver by Order entered May 14, 2003. The Receiver properly reasoned that the Order Reappointing Receiver reset the ten-day timeline of section 754 and on May 20, 2003, well within the ten-day period, filed copies of the complaint and order of reappointment in the United States District Court for the Eastern District of Michigan. The Receiver has met the requirements of section 754 and consequently this court properly holds in rem jurisdiction over the receivership property alleged to be in the control of Robert June.

The defendant argues that, despite the Order Reappointing Receiver, the Receiver nonetheless lacks authority to assert jurisdiction because the plaintiff's Motion for Order Reappointing Receiver failed to name Michigan as one of the states in which the Receivership Property is purportedly located.[1] This fact is, however, of questionable relevance. If the defendant's objection to the Receiver's failure to name Michigan as a suspected location for Receivership Property rests on lack of notice, such concerns must be rendered obsolete by the Receiver's compliance with the procedural requirements of Section 754, the sole purpose of which are to provide notice. Absent some further reason for the defendant's objection, the court can discern no justification for limiting the Receiver's ability to seek jurisdiction solely in the states specified in its motion.

B.

[1] The Receiver's motion named Arizona, California, Connecticut, the District of Columbia, Massachusetts, and Utah as potentially containing Receivership Property.

Because section 754 deals exclusively with in rem jurisdiction over the receivership property, it is insufficient, standing alone, to serve as the basis for jurisdiction with regard to an individual defendant. *Gilchrist v. General Electric Capital Corp.*, 262 F.3d 295, 300-301 (4th Cir. 2001). When read in conjunction with Federal Rule of Civil Procedure 4(k)(1)(D) and 28 U.S.C. § 1692, however, section 754 may be used as a "stepping stone" for the exercise of in personam jurisdiction. *Vision Communications*, 74 F.3d at 290.

Under Rule 4(k)(1)(D), the service of a summons is effective to establish jurisdiction over the person of the defendant "when authorized by a statute of the United States." In this instance, section 1692 provides such statutory authorization:

> In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

28 U.S.C. § 1692. Section 1692 authorizes nationwide service of process, and as such, "so long as the assertion of jurisdiction over the defendant is compatible with due process, the service of process is sufficient to establish the jurisdiction of the federal court over the person of the defendant." *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 626 (4th Cir. 1997) (citing *Hogue v. Mildon Eng'g, Inc.*, 736 F.2d 989, 991 (4th Cir. 1984)).

Here, assertion of jurisdiction over the defendant comports with the requirements of Due Process. The Due Process Clause of the Fifth Amendment protects, *inter alia*, the

interests of individuals against the unfair burden of litigating in an inconvenient forum. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites*, 456 U.S. 694, 702 n.10 (1982); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980). When the defendant is located within the United States, however, any inconvenience will rarely rise to a level of constitutional concern. *ESAB Group*, 126 F.3d at 627. In a case in which a federal court is attempting to exercise personal jurisdiction over a defendant pursuant to a statute providing for nationwide service of process, the congressionally articulated policy permitting the assertion of in personam jurisdiction should prevail except in cases of "extreme inconvenience or unfairness." *Id.* Such cases arise where "the burden of distant litigation is so great as to put [the defendant] at a 'severe disadvantage.'" *Id.* (citing *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 948 (11th Cir. 1997)).

The defendant represents that he is a resident of the state of Michigan. The defendant will thus undoubtedly face some level of inconvenience in having to defend this action in Virginia. On the other hand, substantial weight must be given to the congressional policy behind the authorization of nationwide service of process provided by section 1692. Provision for national service is made to facilitate judicial efficiency by permitting courts to manage claims concerning Receivership Property in a single forum. *See In Re AES Corp. Securities Litigation*, 240 F. Supp. 2d 557, 561 (E.D. Va. 2003). Having weighed the interests presented in this case, this court finds the defendant's burden is no so extreme as

to implicate Due Process protections. Accordingly, jurisdiction over the person of defendant is properly established in this case.

III.

Having concluded that this court properly exercises both in rem jurisdiction over the Receivership Property and in personam jurisdiction over the person of the defendant pursuant to specific statutory authorization, it is unnecessary to reach the defendant's contention that this court lacks personal jurisdiction by the terms of Virginia's long arm statute. Accordingly, the defendant's motion to quash service of process and dismiss for lack of personal jurisdiction shall be denied as detailed above. An appropriate order shall this day enter.

ENTERED: _____

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Senior United States District Judge

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Date

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ROY M. TERRY, JR., and DURRETTEBRADSHAW, PLC, RECEIVER FOR: TERRY L. DOWDELL, DOWDELL, DUTCHER & ASSOCIATES, INC., EMERGED MARKET SECURITIES, DE-LLC, AUTHORIZED AUTO SERVICES, INC. and VAVASSEUR CORPORATION,	)	CIVIL ACTION NO. 3:03CV00052
Plaintiffs,	)	
v.	)	ORDER
ROBERT F. JUNE, SR.,	)	
Defendant.	)	JUDGE JAMES H. MICHAEL, JR.

Before the court is the defendant's "Combined Motion to Dismiss and Motion to Quash Service of Process," filed August 13, 2003. The court has carefully considered the defendant's motion and the relevant case law, and for the reasons stated in the accompanying memorandum opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

that the August 13, 2003 motion of the defendants to quash service of process and dismiss for lack of personal jurisdiction shall be, and hereby is, DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

ENTERED: _____

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Senior United States District

Judge

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Date